

December 18, 1980

EDWIN COLBY

STATEMENT OF THE CHAIRMAN

This is a continuation of the deliberations on the hearing for Edwin Colby concerning the proposed termination of his employment due to lack of money.

On September 18, 1980, the Boston Redevelopment Authority voted to grant a hearing relating to the proposed termination of employment due to lack of money. On September 18, 1980 the hearing was scheduled for October 2, 1980 and subsequently continued to October 16, 1980, November 13, 1980, November 20, 1980 and deliberations were continued to December 18, 1980 at 3:00 P.M.

December 18, 1980

HEARING FOR VETERAN BY AUTHORITY BOARD

RE: PROPOSED TERMINATION

<u>NAME</u>	<u>POSITION CLASSIFICATION</u>	<u>SALARY</u>
Edwin Colby	Deputy Director Transportation Planning	\$31,768

RESOLUTION OF THE BOSTON REDEVELOPMENT AUTHORITY CONCERNING EDWIN J. COLBY

WHEREAS, on December 30, 1968 (see also resolution of January 25, 1961) the Authority pursuant to the recommendation of the then Development Administrator adopted the following policy:

- "1. Re: Establishment of a class of temporary employees to be known as Development Program Employees.

Whereas, the expanded staff requirements for carrying out the Boston Development Program will exist for a temporary period and can best be met by a maximum flexibility in hiring, dismissal, promotion and transfer of staff, and

Whereas, if such staff were to be classified as permanently employed within the meaning of Section 52 of Chapter 121B of the General Laws, it would seriously jeopardize the Authority's ability to carry out the program with maximum efficiency and economy.

Therefore, be it Resolved that there shall be established a new class of temporary employees of the Authority, which shall be known as Development Program Employees who shall be employed from time to time for work in the Development Program and shall not be considered as permanent employees of the Authority. All such employees, unless otherwise specifically provided, may be dismissed at any time for cause or on three months notice without cause."

WHEREAS, the Director has recommended that the employment of Edwin F. Colby be terminated for cause, namely, lack of money; and

WHEREAS, the Authority has held a hearing on October 2, 1980 relative to said termination, after proper notice of said hearing to said Edwin F. Colby; and said hearing was continued by agreement of the parties to October 16, 1980, October 30, 1980, November 13, 1980, November 20, 1980 and subsequently to December 18, 1980.

WHEREAS, the Authority hereby finds based upon the evidence presented at the Board hearing of October 2, 1980 and continued hearings of October 16, 1980, October 30, 1980, November 13, 1980, November 20, 1980 and December 18, 1980 on which evidence is hereby incorporated by reference, that lack of money warrants the termination of employment of Edwin F. Colby, and

On motion duly made and seconded, it was

VOTED: That the employment of Edwin F. Colby be terminated for cause, namely, lack of money, said termination to take effect December 19, 1980. Said notice shall be in the form attached hereto and shall include a statement that the Authority does not by this action waive any other causes that it may have for the termination of said employment.

VOTED: An additional notice of termination be sent to the City of Boston Retirement Board and a copy sent to said Edwin F. Colby in accordance with General Laws Chapter 32, Section 16.

Boston Redevelopment Authority

Robert J. Ryan, Director

December 18, 1980

Mr. Edwin F. Colby
21 Cottage Street
Hingham, Massachusetts 02043

Dear Mr. Colby:

This is formal notice that the Boston Redevelopment Authority at the meeting of December 18, 1980, after a hearing on the matter of termination of your employment, adopted a resolution incorporating a vote therein to terminate your employment because of cause, namely, lack of money, said termination to take effect December 19, 1980. (A copy of said resolution and vote is attached hereto.)

Notwithstanding the reasons given in this notice, there is no waiver thereby of any other grounds the Authority may have for termination of your employment.

BOSTON REDEVELOPMENT AUTHORITY

By _____
Robert J. Ryan
Director

Boston Redevelopment Authority

Robert J. Ryan, Director

November 14, 1980

Mr. Edwin Colby
21 Cottage Street
Hingham, Massachusetts 02043

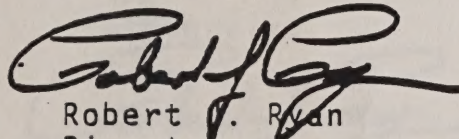
Dear Mr. Colby:

The Authority Board has continued the hearing concerning the proposed termination of your employment for cause, namely, lack of funds to November 20, 1980 at 3:00 P.M.

At that time, the Authority Board will continue the hearing and deliberation on the proposed termination of your employment.

Please be available in the Board Room at that time.

Sincerely,



Robert J. Ryan
Director

Boston Redevelopment Authority

Robert J. Ryan, Director

November 14, 1980

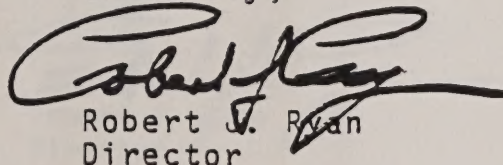
David H. Drohan, Esquire
188 Whiting Street
Hingham, Massachusetts 02043

Dear Mr. Drohan:

The Authority Board has continued the hearing concerning the proposed termination of Edwin Colby's employment for cause, namely, lack of funds until Thursday, November 20, 1980 at 3:00 P.M.

Enclosed is a copy of a letter notifying Edwin Colby that the Authority Board has continued the hearing concerning his proposed termination.

Sincerely,



Robert J. Ryan
Director

Enclosure

Boston Redevelopment Authority

Robert J. Ryan, Director

October 31, 1980

Mr. Edwin Colby
21 Cottage Street
Hingham, Massachusetts 02043

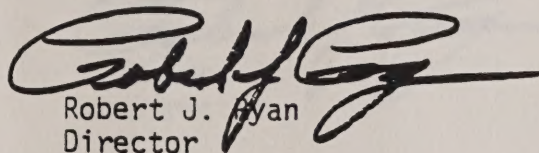
Dear Mr. Colby:

The Authority Board has continued the hearing concerning the proposed termination of your employment for cause, namely, lack of funds to November 13, 1980 at 3:00 P.M.

At that time, the Authority Board will continue the hearing and deliberation on the proposed termination of your employment.

Please be available in the Board Room at that time.

Sincerely,



Robert J. Ryan
Director

Boston Redevelopment Authority

Robert J. Ryan, Director

October 31, 1980

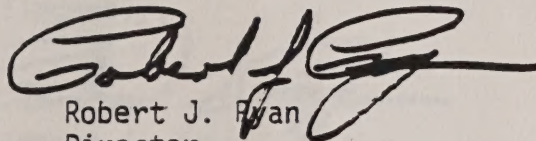
David H. Drohan, Esquire
188 Whiting Street
Hingham, Massachusetts 02043

Dear Mr. Drohan:

The Authority Board has continued the hearing concerning the proposed termination of Edwin Colby's employment for cause, namely, lack of funds until Thursday, November 13, 1980 at 3:00 P.M.

Enclosed is a copy of a letter notifying Edwin Colby that the Authority Board has continued the hearing concerning his proposed termination.

Sincerely,



Robert J. Ryan
Director

Enclosure

Boston Redevelopment Authority

Robert J. Ryan, Director

October 27, 1980

Mr. Edwin Colby
21 Cottage Street
Hingham, Massachusetts 02043

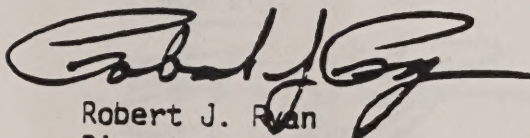
Dear Mr. Colby:

Per your request, the Authority Board has continued the hearing concerning the proposed termination of your employment for cause, namely, lack of funds from Thursday, October 16, 1980 to Thursday, October 30, 1980 at 3:00 P.M.

At that time, the Authority Board will continue the hearing and deliberation on the proposed termination of your employment.

Please be available in the Board Room at that time.

Sincerely,



Robert J. Ryan
Director

Boston Redevelopment Authority

Robert J. Ryan, Director

October 27, 1980

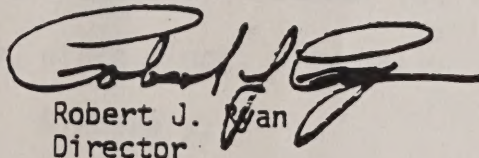
David H. Drohan, Esquire
188 Whiting Street
Hingham, Massachusetts 02043

Dear Mr. Drohan:

Pursuant to your request that the hearing for Edwin Colby be continued from Thursday, October 16, 1980, the Authority Board has continued the hearing concerning the proposed termination of Edwin Colby's employment for cause, namely, lack of funds until Thursday, October 30, 1980 at 3:00 P.M.

Enclosed is a copy of a letter notifying Edwin Colby that the Authority Board has continued the hearing concerning his proposed termination.

Sincerely,



Robert J. Ryan
Director

Enclosure

3 X C - R. RYAN
1 X C - K. SIMONIAN
1 X C - FILE

Boston Redevelopment Authority

October 6, 1980

David H. Drohan, Esquire
188 Whiting Street
Hingham, Massachusetts 02043

Dear Mr. Drohan:

Per your request of October 2, 1980, enclosed is a copy of the Informational Memo on Staff Reductions that was presented to the Authority Board on September 18, 1980.

Also enclosed is a copy of a letter notifying Mr. Edwin Colby that the Authority Board has continued the hearing concerning his proposed termination until Thursday, October 16, 1980 at 2:30 P.M. in the Board Room, ninth floor, City Hall.

Sincerely,



Carol J. Corcoran
Director of Personnel

Enclosures: 2

FILE

Boston Redevelopment Authority

Robert J. Ryan, Director

October 3, 1980

Mr. Edwin Colby
21 Cottage Street
Hingham, Massachusetts 02043

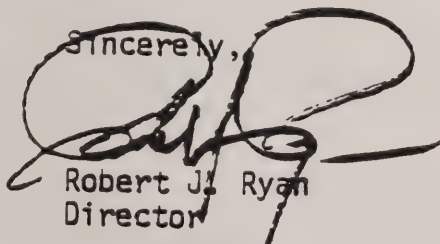
Dear Mr. Colby:

As a follow-up to the action of the Authority at the October 2, 1980 meeting, the Authority Board has continued the hearing concerning the proposed termination of your employment for cause, namely, lack of money until Thursday, October 16, 1980 at 2:30 P.M.

At that time, the Authority will continue the hearing and deliberation on the proposed termination of your employment.

Please be available in the Board Room at that time.

Sincerely,



Robert J. Ryan
Director

Boston Redevelopment Authority

Robert J. Ryan, Director

September 18, 1980

Mr. Edwin F. Colby
21 Cottage Street
Hingham, MA 02043

Dear Mr. Colby:

This is formal notice that the Boston Redevelopment Authority, at the meeting on September 18, 1980, voted to give you a hearing, to be held in the board room, ninth floor, City Hall, Boston, Massachusetts at 2:30 P.M., October 2, 1980 relative to the proposed termination of your employment on October 17, 1980 for cause, namely, lack of money. A copy of said vote is attached hereto. Notwithstanding the reason advanced in this notice, there is no waiver thereby of any other grounds the Authority may have as a matter of law for such proposed termination.

Enclosed is a copy of sections forty-three, forty-five and forty-six A of Chapter 31 of the Massachusetts General Laws.

Boston Redevelopment Authority

By _____

Robert J. Ryan
Director

VOTED: That Edwin F. Colby be given a hearing by the Boston Redevelopment Authority in the board room, ninth floor, City Hall, Boston, Massachusetts, at 2:30 P.M., October 2, 1980 relative to the proposed termination of his employment for cause, namely, lack of money. And that Edwin F. Colby be notified of said hearing by letter in the form attached hereto.

PROPOSED RESOLUTION UNDER CONSIDERATION BY THE
BOSTON REDEVELOPMENT AUTHORITY

WHEREAS, on December 30, 1968, (see also resolution of January 25, 1961) the Authority pursuant to the recommendation of the then Development Administrator adopted the following policy:

- "1. Re: Establishment of a class of temporary employees to be known as Development Program employees.

Whereas, the expanded staff requirements for carrying out the Boston Redevelopment Program will exist for a temporary period and can best be met by a maximum flexibility in hiring, dismissal, promotion and transfer of staff, and

Whereas, if such staff were to be classified as permanently employed within the meaning of Section 52 of Chapter 121B of the General Laws, it would seriously jeopardize the Authority's ability to carry out the program with maximum efficiency and economy.

Therefore, be it Resolved that there shall be established a new class of temporary employees of the Authority, which shall be known as Development Program Employees who shall be employed from time to time for work in the Development Program and shall not be considered as permanent employees of the Authority. All such employees, unless otherwise specifically provided, may be dismissed at any time for cause or on three months notice without cause."

WHEREAS, the Director has recommended that the employment of the persons listed on the attached be terminated for cause, namely, lack of money; and

WHEREAS, the Authority has found on evidence presented at the Board meeting of September 18, 1980, that lack of money warrants the termination of employment of the following named individuals and;

On motion duly made and seconded, it was

VOTED: That the employment of the persons listed on the attachment be terminated for cause, namely, lack of money, said termination to take effect October 17, 1980. Said notice shall be in the form attached hereto and shall include a statement that the Authority does not by this action waive any other causes that it may have for the termination of said employment.

of a division of personnel administration in the executive office for administration and finance. See G.L. c. 7, § 14A, and the notes thereunder.

Cross References:

Treasurers and Assistant Treasurers of state mental hospitals, appointment, accountability of this section. See c. 12, § 14C.

§ 43. Tenure; discharge, removal, transfer, abolition of office, etc.; notices; hearings; review; reinstatement; punishment duty; reimbursement for defense expenses

(a) Every person holding office or employment under permanent appointment in the official or labor service of the commonwealth, or of any county, city or town thereof, shall have unlimited tenure of office or employment, subject to the provisions of this chapter and the rules made thereunder. He shall not be discharged, removed, suspended for a period exceeding five days, laid off, transferred from such office or employment without his consent in writing if he held office or employment prior to October fourteen, nineteen hundred and sixty-eight, lowered in rank or compensation without his consent in writing, nor shall his office or position be abolished, except for just cause and for reasons specifically given him in writing. Before any action affecting employment or compensation referred to in the preceding sentence is taken, the officer or employee shall be given a written statement of the specific reason or reasons for the contemplated action, together with a copy of sections forty-three, forty-five and forty-six A, and shall be given a full hearing before the appointing authority on the specific reason or reasons given, of which hearing he shall have at least three days' written notice from the appointing authority, except in cases of separation from service in the official or labor service, resulting from lack of work or lack of money or from abolition of positions, in which case at least seven days' written notice of hearing shall be given by the appointing authority. Within two days after completion of said hearing, the appointing authority shall give to the employee affected a written notice of his decision, stating fully and specifically the reasons therefor.

(b) If within ten days after receiving written notice of the decision of the appointing authority the person so discharged, removed, suspended, laid off, transferred, lowered in rank or compensation, or whose office or position was abolished, shall so request in writing, he shall be given a hearing before a member of the commission or some disinterested person designated by the chairman of the commission. Said hearing shall be commenced in not less than three nor more than ten days, and shall be completed within thirty days, after the filing of such request, unless, in either case, both parties thereto shall otherwise agree in writing, or unless a continuance is deemed necessary or advisable in the discretion of the hearing officer, and the findings shall be reported forthwith to the commission for action. The decision of the commission shall be in writing and notice thereof sent to all parties concerned within ten days after the filing of the report. If the commission finds that the action of the appointing authority was justified, such action shall be affirmed; otherwise, it shall be reversed and the person concerned shall be returned to his office or position without loss of compensation. The commission may also modify any penalty imposed by the appointing authority.

(c) Any hearing under this section shall, if either party concerned so requests in writing, be public, and at any such hearing the person concerned shall be allowed to answer the charges preferred against him either personally or by counsel.

(d) The reasons, notices and answers and the order of discharge, removal, suspension, layoff, transfer, lowering in rank or compensation or abolition of the office or position, and the facts as found by the commission, shall be subject to judicial review by the municipal court of the city of Boston or by the district court within the judicial district of which such person resides, as provided in section forty-five.

(c) A suspension for a period not exceeding five days may be made only by the appointing authority or by a subordinate to whom authority to make such suspensions has been delegated, or by a chief of police, or officer performing similar duties, however entitled, or by a subordinate to whom such authority has been delegated by him, and shall be made only for just cause. The officer or employee suspended shall be reinstated by the person authorized to make the suspension at the expiration of the period of such suspension, but shall not be entitled to compensation for such period unless, as hereinafter provided, the suspension is found after hearing or upon appeal to have been without just cause. Within twenty-four hours after his suspension, such officer or employee shall be given a copy of sections forty-three, forty-five and forty-six A, by the person authorized to make the suspension, together with a written notice stating the specific reason for the suspension and informing him that he may, within forty-eight hours of his receipt of such notice, request in writing a hearing by the appointing authority on the question of whether there was just cause for the suspension and if he so requests he shall be given a hearing within five days of the receipt of such request by the appointing authority. A copy of the notice of suspension to the officer or employee shall be forwarded forthwith to the personnel administrator by the person authorized to make the suspension, together with a request for the approval of reinstatement of the officer or employee to be effective at the expiration of the period of suspension. Whenever such hearing is given, the appointing authority shall give the officer or employee suspended a written notice of his decision within two days after the hearing. An officer or employee whose suspension under this paragraph is decided, after hearing, to have been without just cause shall be deemed not to have been suspended and he shall be entitled to compensation for the period for which he was suspended, and if it is decided, after hearing, that there was just cause for such suspension such officer or employee may appeal to the commission as provided in paragraph (b) and he shall be entitled to judicial review of the action taken by the commission as provided in paragraph (d). The provisions of paragraph (c) shall apply to all hearings under this paragraph. No officer or employee shall be subsequently discharged, removed, suspended for a period exceeding five days, laid off, transferred from his office or employment without his consent if he held office or employment prior to October fourteen, nineteen hundred and sixty-eight or lowered in rank or compensation, nor shall his office or position be abolished, for the same specific reason or reasons for which he was originally temporarily suspended for a period not exceeding five days under this paragraph except in accordance with paragraph (a). Notice of any action taken by the appointing authority under this paragraph shall be forwarded forthwith to the personnel administrator.

(f) An officer or employee shall automatically be reinstated at the end of the five period for which he was suspended. Any subsequent reinstatement after suspension shall be subject to the approval of the administrator, and, if denied, an appeal may be taken to the commission as provided in paragraph (b) of section two. The notice required by paragraph (a) of this section to be given to an employee whom it is proposed to suspend after a prior suspension shall state that his reinstatement after such suspension is subject to the approval of the administrator.

(g) Punishment duty shall not be imposed without just cause upon any police officer or fire fighter subject to this chapter. A police officer or fire fighter upon whom punishment duty is imposed shall, within twenty-four hours of the imposition of such punishment duty, be given a copy of this section and of section forty-five, together with a written notice stating the specific reason for the imposition of such punishment duty and the duration thereof and informing him that he may, within forty-eight hours of receipt of such notice, request in writing a hearing by the appointing authority, and if he so requests he shall be given a hearing within five days of receipt of such request by the appointing authority. A copy of the notice of imposition of punishment duty shall be forwarded forthwith to the personnel administrator. Whenever such hearing is given, the appointing authority shall

give the police officer, or fire fighter upon whom the punishment duty is imposed a written notice of his finding within two days after the hearing. If after such hearing, the appointing authority finds no just cause exists for the imposition of punishment duty, such punishment duty shall be deemed not to have been imposed; if, after such hearing, the appointing authority finds that just cause does exist for the imposition of punishment duty, the police officer or fire fighter upon whom the punishment duty is imposed may, appeal to the commission as provided in paragraph (b), and he or the appointing authority shall be entitled to judicial review of the action taken by the commission as provided in paragraph (d). The provisions of paragraph (c) shall apply to all hearings under this paragraph. Notice of any action taken by the appointing authority under this paragraph shall be forwarded forthwith to the personnel administrator.

(h) Any person holding office or employment under permanent appointment in the official or labor services of the commonwealth, or any county, city, town or district thereof who has incurred expense in defending himself against an unwarranted discharge, removal, suspension, laying off, transfer, lowering in rank or compensation, or abolition of his position, shall, if he engages an attorney for such defense, be reimbursed for such expense: provided, however, that the amount of such reimbursement shall in no event exceed an aggregate sum of nine hundred dollars. Such reimbursement, in each instance, shall be limited to a sum not to exceed two hundred dollars in:—

- (1) a hearing by the appointing authority;
- (2) a hearing by the civil service commission;
- (3) a judicial review by the municipal court of the city of Boston or by the district court within the judicial district where such person resides, as provided in section forty-five.

In addition thereto, reimbursement in each instance shall be limited to a sum not to exceed one hundred dollars for:—

- (1) summons of witnesses;
- (2) cost of stenographic transcript;
- (3) any other necessary expense incurred in such defense.

Any such person shall, upon written application made to his appointing authority within thirty days from final disposition of his case be reimbursed from the same source from which his salary is paid. Such reimbursement shall be paid within thirty days from the receipt of such written application by the appointing authority. No reimbursement shall be made except upon receipt of satisfactory proof that such expenses were actually incurred for the purposes set forth in this section.

(i) In the computation of any period of time limited by this section, Saturdays, Sundays and holidays shall be excluded.

(j) The provisions of this section or sections forty-five and forty-six A shall not apply to any person who has been reported as on unauthorized absence as provided for in section eighteen.

Amended by SL1048, c. 537, § 3-4; SL1060, c. 708, § 42A; SL1070, c. 72, § 1-5; SL1071, c. 170, § 4; SL1074, c. 535, § 122 to 125; SL1075, c. 557, § 1.

See Amendment, SL1362, c. 537, § 2, approved July 18, 1968, deleted words "transferred from such office or employment without his consent in writing" following words "laid off" in second sentence of par. (a), which were restored by SL1070, c. 72, § 1.

Section 4 deleted "transferred or" following words "laid off" in first sentence of par. (b), which was restored by SL1070, c. 72, § 2.

Section 5 deleted "transfer" following word "layoff" in par. (d), which was restored by SL1070, c. 72, § 2.

Dist. Court of City of Boston (1973) 337 N.E. 2d 122, 1973 Mass. Adv. Sh. 1231.

Review by single justice on certiorari in nature of certiorari seeking review of civil service employee's discharge for unauthorized absence could have been limited to finding that discharge was properly sustained by municipal court. *Cannery v. Municipal Court of City of Boston* (1973) 337 N.E.2d 124-125, 1973 Mass. Adv. Sh. 2172.

Record dismissed: that district court judge in reviewing decision of board of selection of town and Civil Service Commission discharging town policeman had not confined himself to determining whether findings of hearing officer were supported by evidence and had therefore applied an improper standard of review, requiring that his decision be set aside and that action of board and Commission be affirmed. *Board of Selection of Dartmouth v. Third Dist. Court of Bristol* (1971) 289 N.E.2d 448, 139 Mass. 468.

A "review" within this section providing for proceeding in district court to review action of Civil Service Commission affirming action of appointing authority discharging city civil service employee, includes a reexamination of proceeding already concluded for purpose of preventing a result which appears not to be based upon exercise of an unbiased judgment. *McCormack v. Municipal Court of Brockton* (1969) 243 N.E.2d 774, 133 Mass. 738.

On review of Civil Service Commission decision which modifies town employee's

discharge to six months' suspension, district court judge was not required to take evidence himself but was entitled to review transcript of evidence before Civil Service Commission. *Id.*

Jurisdiction of the permanent appeals board and the civil service commission are mutually exclusive and not concurrent; a matter coming within the jurisdiction of the permanent appeals board is not within the jurisdiction of the civil service commission; in addition, there may be matters not coming within the jurisdiction of either agency. *Quincy, Gen. Nov. 22, 1961, p. 122.*

Permanent appeals board does not have jurisdiction to hear and dispose of a further appeal through the grievance procedure in instances where an applicant chooses to appeal to the civil service commission or to the permanent appeals board and such appeal is denied. *Id.*

If a person brings an appeal under the provisions of section 44A of this chapter wherein this section has not been complied with and the civil service commission determines that the rights of the complainant have been prejudiced, the complainant should be immediately restored without loss of compensation or other rights; if it is determined that the rights of the complainant have not been prejudiced, the complaint should be denied. *Quincy, Gen. Nov. 22, 1961, p. 172.*

§ 45. Judicial review of removals, etc.

Within thirty days after receipt of notice of the final decision of the commission on a hearing provided for in section forty-three, the person who was discharged, removed, suspended, laid off, transferred from his office or employment without his consent in writing if he held office or employment prior to October fourteen, nineteen hundred and sixty-eight or lowered in rank or compensation, or whose office or position was abolished, may, if said action was affirmed by the commission or if said action was modified by the commission and such person continues to be aggrieved by such modification, file a petition to review the commission's decision in the municipal court of the city of Boston or in the district court within the judicial district of which such person resides. A copy of the petition shall, within the same period, be served personally or by registered mail upon the commission and the appointing authority. Service on the commission shall be sufficient if service is made on any member of the commission or on the secretary to the commission.

The petition shall be addressed to the court and shall name as respondents (a) the chairman and members of the commission and (b) the appointing authority. It shall include a concise statement of the facts upon which jurisdiction and venue are based, facts showing that the petitioner is aggrieved, and the ground or grounds specified in paragraph (a) of this section upon which petitioner contends he is entitled to relief. The petition shall demand the relief to which petitioner believes he is entitled.

Within thirty days after service of a copy of the petition to review upon the commission, the commission shall cause an appearance to be entered on its behalf. At the time of the hearing on the petition, the commission shall file with the court the original or a certified copy of the record of the proceeding under review. The original or certified copy, as the case may be, shall be accompanied by a certification over the signature of the secretary to the commission, that the same is true and complete. The record shall consist of (a) the entire proceedings, or (b) such portions thereof as the commission and the parties may stipulate, or (c) a statement of the case agreed to by the commission and the parties. The expense of preparing the record may be assessed as part of the costs in the case. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

The review shall be conducted by the court and shall be confined to the record, except that in cases of alleged irregularities in procedure before the commission, not shown in the record, testimony thereon may be taken in the court.

If application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material to the issues in the case, and that there was good reason for failure to present it in the proceeding before the commission, the court may order that the additional evidence be taken before the commission upon such conditions as the court deems proper. The commission may modify its findings and decision by reason of such additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence together with any modified or new findings or decision.

The court may affirm the decision of the commission if it finds that the decision was justified or remand the matter for further proceedings before the commission; or the court may set aside and reverse the decision of the commission if it determines that such decision is—

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the commission; or
- (c) based upon an error of law; or
- (d) made upon unlawful procedure; or
- (e) unsupported by substantial evidence; or
- (f) arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law.

The court shall make the foregoing determinations upon consideration of the entire record, or such portions of the record as may be cited by the parties.

If the court finds that the decision of the commission confirming action by an appointing authority in discharging, removing, suspending, laying off, transferring from his office or employment without his consent, lowering in rank or compensation, or abolishing his position should be reversed, the employee shall be reinstated in his office or position without loss of compensation.

The decision of the court shall be final and conclusive upon the parties, and a copy of the decision shall be forwarded forthwith by the clerk of the court to the commission, the appointing authority and the petitioner.

Amended by SL1970, c. 72, § 8; SL1970, c. 71.

1970 Amendments. SL1970, c. 71, approved Aug. 13, 1970, reverse section, as amended by SL1970, c. 72, § 4, approved Feb. 23, 1970 which inserted "from his office or employment without his consent in writing if he held office or employment prior to October fourteen, nineteen hundred and sixty-eight" in first sentence of first paragraph.

1968 Revised Laws. SL1968, c. 537, § 7, provided: "Except for just cause and sub-

ject to the provisions of sections forty-three and forty-five of chapter thirty-one of the General Laws as in effect immediately prior to the effective date of this act, no person who on said effective date holds office or employment under permanent appointment in the official or labor service of the commonwealth, or of any county, city or town thereof, shall be transferred in the official or labor service without his consent in writing."

proven innocent" portends a future denial of due process is not ripe for judicial resolution. *Broderick v. di Grana* (Cal.1974) 534 P.2d 641.

44. *Liases*.

Delay of four months between municipal court decision reinstating police officer

with back pay and filing by police commissioner of petition for writ of certiorari to quash order of municipal court did not constitute laches on part of police commissioner. *Police Comm'r of Boston v. Municipal Court of West Roxbury Dist.* (1975) 332 N.E.2d 901, 1975 Mass.App.528, 233.

§ 45B. Repealed by St.1973, c.171

St.1973, c.171, repealing this section, was approved April 12, 1973.

§ 46A. Petition for writ of mandamus; jurisdiction; procedure for reinstatement

The supreme judicial court shall have jurisdiction of any petition for a writ of mandamus for the reinstatement of any person alleged to have been illegally discharged, removed, suspended, laid off, transferred, lowered in rank or compensation, or whose office or position is alleged to have been illegally abolished under this chapter: provided, that such petition shall be filed in said court within six months next following such allegedly illegal discharge, removal, suspension, laying off, transfer, lowering in rank or compensation, or abolition of his position, unless said court for cause shown extends the time.

If any person alleges that his employment or compensation has been affected by action of the appointing authority in failing to follow the requirements of section forty-three, he may file a complaint with the civil service commission within ten days, exclusive of Saturdays, Sundays and holidays after the said action has been taken. Said complaint shall set forth just how the appointing authority has failed to follow the requirements of section forty-three. This complaint may be filed with the request of the said person for a hearing under the provisions of said section forty-three and if it is determined by the civil service commission that the said authority has failed to follow the requirements of section forty-three and that the rights of said person have been prejudiced thereby, the said commission may order the said appointing authority to restore immediately said person to his employment without loss of compensation or other rights.

Amended by St.1973, c.357, § 2.

1975 Amendment. St.1973, c.357, § 2, approved Aug. 12, 1975, substituted "ten" for "seven" days in the first sentence of the second paragraph.

Cross References

Unauthorized absence of employee, applicability of this section, see section 43(1) of this chapter.

Law Review Commentaries

Rights of civil service employees facing discharge: *Supreme Court*, 1973 term, (1974) 83 *Harvard L.Rev.* 11.

1. In general

Phrase "without loss of compensation" as used in sections 43 and 45 of this chapter governing discharge and removal of civil service employees and judicial review thereof and this section governing mandamus remedy permits mitigation of damages so that amount of back pay for reinstated officer is determined by subtracting amount that he has in fact earned or could have

earned during period from discharge to reinstatement. *Police Commissioner of Boston v. Clouse* (1968) 234 N.E.2d 423, 334 Mass. 333.

City fireman, who brought an action in mandamus for reinstatement, had no constitutional right to be a fire fighter. *Lumley v. Fire Commissioner of Boston* (1966) 214 N.E.2d 734, 330 Mass. 323.

Jurisdiction of the personnel appeals board and the civil service commission are mutually exclusive and not concurrent: a matter coming within the jurisdiction of the personnel appeals board is not within the jurisdiction of the civil service commission: in addition, there may be matters not coming within the jurisdiction of either agency. *Op.Altv.Gen.* Nov. 22, 1951, p. 130.

Personnel appeals board does not have jurisdiction to hear and dispose of a further appeal through the grievance process.

INTER-OFFICE COMMUNICATION

TO Carol Corcoran, Director of Personnel
FROM Harry G. Stoddard, Assistant General Counsel
DATE October 23, 1980
SUBJECT Edwin Colby discharge; veteran's status

At your request, I have examined the Massachusetts statutes regarding the status of a veteran who is subject to discharge from his position with the Authority. In particular, you have asked me to determine whether Mr. Colby is, as a veteran, entitled to "bump" or replace another engineer holding a similar position with the Authority. For the reasons stated below, it is my conclusion that Mr. Colby would not be entitled to displace another engineer in this manner.

Section 52 of M.G.L. Chapter 121B provides that a veteran shall not be separated from his office or position while "similar offices or positions in the same grade or group" exist in the Agency. Section 45 of M.G.L. Chapter 30 in turn defines "similar offices and positions" as those which are "substantially alike in the duties, responsibilities, organizational relationships, qualifications, and other significant characteristics".

As a result of my inquiries about the nature of the existing job positions in the Authority's Engineering Department, it is my opinion that there are no positions which are "substantially alike" when compared to Mr. Colby's job as Deputy Director for Transportation.

First, there is no Deputy Director position in the Engineering Department. There is a Director of Engineering and three Chief Project Engineers, whose grade and step levels are different from Mr. Colby's. There is therefore no position which is similar in its "organizational relationship" to Mr. Colby's.

Secondly, while the basic educational requirements for all of these engineering positions are basically alike, the background qualifications are quite different. It is my understanding that Mr. Colby's experience in transportation and traffic

engineering is a sub-specialty in the field of civil engineering and does not represent the full spectrum of the field. Thus, there is no position in the Engineering Department for which the "qualifications" mentioned in the statute are substantially alike to Mr. Colby's.

Thirdly, the duties and responsibilities of engineers in the Engineering Department appear to substantially differ from Mr. Colby's. Typical items coming under Mr. Colby's responsibilities are traffic counts and projections, signalization, turning movements, traffic lanes, and sight distances. Typical items within the responsibility of the Engineering Department, on the other hand, include storm drains, sewer and water lines, curb reveal, lighting, sidewalk and street design, landscaping, seawalls, building and bridge repair, and parks and playgrounds. In addition, Engineering Department engineers are responsible for extensive contract preparation work and many kinds of contacts with other agencies and citizen groups. "Duties and responsibilities" for the two jobs are therefore not substantially alike, as the statutes require.

It is therefore my opinion that the majority of "significant characteristics" in the two positions are not sufficiently similar under the statutory guidelines to give Mr. Colby preference over any other engineer in the Engineering Department.


Harry G. Stoddard
Assistant General Counsel

HGS:mr

18 SEPTEMBER 1980

MEMORANDUM

TO: BOSTON REDEVELOPMENT AUTHORITY

FROM: ROBERT J. RYAN, DIRECTOR

SUBJECT: INFORMATIONAL MEMO ON STAFF REDUCTIONS

The personnel reductions presented to the Board today are not necessarily reflective of the professional capabilities of the individuals involved. Rather, these reductions are the direct result of major organizational changes and dwindling financial resources.

The Authority has, over the past year, pursued a labor force reduction program. With this Board action today, a total of 70 individuals will have left the employ of the Authority through a combination of retirement, resignations and lay offs since May 30, 1980. From 306 employees on May 30th, we will be at 236 as a result of this action. The annualized savings involved are more than \$1 million. Even with this reduction, an additional \$500,000 in personnel cost reductions must be carried out early in the next calendar year to prevent a deficit in the 1981 fiscal year,

The overall administrative budget of the Authority will have to go from \$10 million in 1980 to an estimated \$6.5 million by 1982. This is a management goal of reducing the Authority's administrative budget by 35 percent over the course of two years.

There are two major reasons for the staff reduction program.

1. Changes in Federal funding levels and procedures, and
2. The evolution of the Authority's role in carrying out its mandated tasks as city planning agency and as principal agency for coordinating and managing development.

The need to reduce the Authority staff had its origins five years ago in the decision by the Federal government to end the Federal Urban Renewal program. (The Community Development Block Grant program became a major source of funding for urban development.) Since that time, the BRA has received Urgent Needs funds for later phases of urban renewal project activities. Urgent Needs funding is also being phased out.

With the end of urban renewal, the BRA lost more than half of its traditional financial resources.

In addition, properties formerly providing rental income to the Authority have been conveyed for development. Hence, we lost another source of funding for administrative costs.

The Authority had received CDBG funds from the City, but that allocation -- as much as \$4 million per year -- is no longer available to us.

And much of the funding available for our renewal activities (grants from the Environmental Protection Agency, for instance), do not contain money for administrative expenses.

The evolution of the Authority's role also makes it necessary for us to reduce the numbers of people employed by the agency. The public investments made by this agency in the 1960's and 1970's have indeed borne fruit. Today there is considerable, in fact, unprecedented private investment in commercial, residential and industrial development in Boston. Managing and coordinating this development activity requires different staffing needs. The Authority, regrettably, has numerous staff in functional areas, such as engineering, family relocation business relocation and real estate, which are not required to carry out the development agenda of the 1980's.

Reduction in our staff in no way undermines the effectiveness of the agency, nor does it signal any change in the BRA's role as the city's planning agency and as the city's principal agency for development. But the shift from administering publicly funded renewal to coordinating and managing privately financed development requires a smaller, different staff than in the past.

At one point the BRA employed almost 700 people. For several years we have operated with approximately 300 people. In the future that number may be reduced to less than 225. The agency's ability to carry out its mandated tasks has remained undiminished during other periods of staff reduction and I am confident that our level of competence and commitment will not be adversely

At the same time, it should be noted that the actions today are necessary because of events over which we have little or no control. I want to add that the staff reduction should in no way be construed as a reflection of the competence and dedication of those individuals affected.